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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

FIELD PRODUCTS INC.,	)	
	)	
Appellant,	)	PCHB No. 85-143
	)	
v.	)	FINAL FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
PUGET SOUND AIR POLLUTION	)	AND ORDER
CONTROL AGENCY,	)	
	)	
Respondent.	)	

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THIS MATTER, the appeal of civil penalty of \$500 for the alleged violation of Puget Sound Air Pollution Control Agency, Regulation I, Section 9.11(a), came for formal hearing in Seattle on September 19, 1985, before the Pollution Control Hearings Board, Wick Dufford and Lawrence J. Faulk (Presiding).

Appellant Field Products Inc. was represented by its business manager, Raymond A. Mansen. Respondent Puget Sound Air Pollution Control Agency (PSAPCA) was represented by its attorney Keith D. McGoffin.

Witnesses were sworn and testified. Exhibits were examined. From

1 the testimony heard and exhibits examined, the Board makes these

2 FINDINGS OF FACT

3 I

4 Appellant Field Products Inc. is a roofing materials manufacturer  
5 located at 703 South Bridges Avenue in Kent, King County Washington.

6 II

7 Respondent PSAPCA is a municipal corporation with the  
8 responsibility for conducting a program of air pollution prevention  
9 and control in a multi-county area which includes the site of  
10 appellant's plant.

11 PSAPCA, pursuant to RCW 43.21B.260 has filed with this Board a  
12 certified copy of its Regulation I (and all amendments thereto) which  
13 is noticed.

14 III

15 In the early morning on May 28, 1985, acting on a complaint from a  
16 neighbor who lives 100 feet south of appellant's plant, respondent  
17 Agency's inspector visited and spoke with complainant.

18 The complainant described the odor as gasoline-like and complained  
19 of a headache from the odor. A second complainant approached. She  
20 verified that the same odor was present at her home another 100 feet  
21 north of the first complainant's residence. She stated that she  
22 experienced difficulty breathing while subjected to the odor.

23 The inspector personally detected the odor and classified it as  
24 typical of light petroleum distillates.

25 In affidavits relating to the event, the complainants said they

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1 are able to smell and discern odors as well as the average person.  
2 They also said they felt the event in question unreasonably interfered  
3 with their enjoyment of life and property.

#### 4 IV

5 The inspector noted that a light south wind estimated at less than  
6 five knots was blowing from appellant's plant toward one of the  
7 complainant's homes. The inspector followed the odor upwind to  
8 appellant's plant. When the inspector passed upwind of appellant's  
9 plant, the odor ceased.

#### 10 V

11 The inspector visited appellant's plant and discussed the matter  
12 with Mr. McGillivray the production supervisor for appellant. Mr.  
13 McGillivray stated that they were processing cutback asphalt product  
14 which involves blending asphalt with a petroleum based solvent. The  
15 inspector visited the work area involved and found the odor to be the  
16 same as that at the complainant's residences, but stronger in  
17 intensity.

#### 18 VI

19 On May 28, 1985 two Notices of Violation (Nos. 20448 and 20449)  
20 were issued to Field Products Inc. for violating Section 9.11(a) of  
21 PSAPCA Regulation I.

#### 22 VII

23 On July 19, 1985, Notice and Order of Civil Penalty No. 6302 was  
24 sent to appellant assessing a penalty of \$500 for allegedly violating  
25 PSAPCA Regulation, Section 9.11(a) and WAC 173-400-040(5). From this,

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1 Field Products appealed on August 2, 1985.

2 VIII

3 Appellant's business manager, Mr. Mansen testified that this was  
4 the first odor problem in the 10 years that they have been  
5 manufacturing these products. He indicated there were two other  
6 petroleum businesses in the area that could have caused the alleged  
7 violation. He did not observe the odor the morning of the alleged  
8 violation.

9 IX

10 The appellant in this case did not contend that the effects  
11 experienced on the date in question did not occur. Neither did the  
12 appellant show that any of the complainants or the inspector possessed  
13 idiosyncratic sensibilities.

14 The Board finds on the record before it, that the odors complained  
15 of emanated from appellant's plant and were, in fact, offensive to  
16 persons of normal sensitivity; and that they did, in fact,  
17 unreasonably interfere with the enjoyment of life, and property on  
18 each of the dates involved here.

19 X

20 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
21 adopted as such.

22 From these Findings of Fact, the Board comes to these

23 CONCLUSIONS OF LAW

24 I

25 The Board has jurisdiction over these persons and these matters.

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1 Chapters 43.21B and 70.94 RCW.

2 II

3 PSAPCA Regulation I, Section 9.11(a) states:

4 It shall be unlawful for any person to cause or  
5 allow the emission of any air contaminant in  
6 sufficient quantities and of such characteristics  
7 and duration as is, or is likely to be, injurious  
8 to human health, plant or animal life, or property,  
9 or which unreasonably interferes with the enjoyment  
10 of life and property.

8 III

9 We conclude that the odors emitted by Field Products Inc. on May  
10 28, 1985, violated Section 9.11(a).

11 The notice of penalty at issue asserts violations of both Section  
12 9.11(a) and WAC 173-400-040(5). Since we decide that Section 9.11(a)  
13 was violated, we need not consider WAC 173-400-040(5).

14 IV

15 RCW 70.94.431 authorizes imposing civil penalties of up to \$1000  
16 per day per offense for violating the regulations of an air pollution  
17 control agency. Section 3.29 of Regulation I has been amended to  
18 reflect this maximum civil penalty of \$1,000. This amendment was  
19 adopted on May 10, 1984, and was in effect when the violation at issue  
20 occurred and when the penalty relating to it was imposed.

21 V

22 The Washington Clean Air Act, chapter 70.94 RCW, is a strict  
23 liability statute. Explanations do not operate to excuse violations  
24 of regulations adopted under its authority. Air contaminant sources  
25 are required to conform to such regulations.

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The violation in this case caused actual adverse effects to human comfort and convenience. On the entire record before us, we conclude that the penalty imposed in this instance is reasonable. Because this appears to be a first offense the maximum penalty of \$1,000 would be excessive. However, the objects of the civil penalty, which include both deterrence in the specific case and the securing of compliance generally, are appropriately served by the level of sanction selected in this case.

## VI

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this


ORDER

Notice and Order of Civil Penalty No. 6302 in the amount of \$500,  
issued by PSAPCA to Field Products, Inc. is affirmed.

DONE this 21st day of October, 1985.

POLLUTION CONTROL HEARINGS BOARD

 10/21/85  
LAWRENCE J. FAULK, Chairman

  
WICK DUFFORD, Lawyer Member

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